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9	BEFORE THE	
10	RESPIRATORY CARE BOARD DEPARTMENT OF CONSUMER AFFAIRS	
11	STATE OF CONSOMER ATTAIRS STATE OF CALIFORNIA	
12	In the Matter of the Accusation Against:	Case No. 1H-2007-480
13	RICHARD ANTHONY SPRAGUE, R.C.P. 6153 Horton Drive	ACCUSATION
14	La Mesa, CA 91942	ACCUSATION
15	Respiratory Care Practitioner License No. 19625	
16	Respondent.	
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18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Stephanie Nunez (Complainant) brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Respiratory Care Board of California (Board).	
22	2. On or about September 2, 1997, the Board issued Respiratory Care	
23	Practitioner License Number 19625 to RICHARD ANTHONY SPRAGUE, R.C.P.	
24	(Respondent). The Respiratory Care Practitioner License was in full force and effect at all times	
25	relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.	
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JURISDICTION

- 3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
- 4. Section 3710 of the Code states, in pertinent part, that "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."
- 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."
 - 6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

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- "(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.
- "(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

"…"

7. Section 3752 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or

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may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

California Code of Regulations, title 16, section 1399.370, states: 8.

"For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

Conviction of a crime involving driving under the influence or reckless "(c) driving while under the influence.

COST RECOVERY

- 9. Section 3753.1 of the Code states:
- "(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation."
 - 10. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the

investigation and prosecution of the case." 1 2 11. Section 3753.7 of the Code states: 3 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall 4 include attorney general or other prosecuting attorney fees, expert witness fees, and other 5 administrative, filing, and service fees." 6 FIRST CAUSE FOR DISCIPLINE 7 (Conviction of a Crime Substantially Related to the Qualifications, 8 Functions and Duties of a Respiratory Care Practitioner) 9 12. Respondent is subject to disciplinary action under section 3750 of the 10 Code, as defined by sections 3750, subdivision (d), 3752, and California Code of Regulations, 11 title 16, section 1399.370, subdivision (c), in that Respondent has been convicted of a crime 12 substantially related to the qualifications, functions, and duties of a Respiratory Care Practitioner. 13 The circumstances are as follows: 14 On or about August 20, 2007, Respondent was involved in a vehicle 15 collision. A police officer was dispatched to the accident scene, where he administered a 16 Preliminary Alcohol Screening (PAS) device test on Respondent. The result of the test indicated a .112% blood alcohol content. 17 b. 18 On or about November 26, 2007, Respondent was convicted by a plea of 19 guilty to driving a vehicle while having a blood alcohol content of .08% or higher. 20 On or about November 26, 2007, Respondent was sentenced to a five-year c. 21 probation. 22 SECOND CAUSE FOR DISCIPLINE 23 (Conviction of a Violation of the Respiratory Care Practice Act)

13. Respondent is further subject to disciplinary action under section 3750 of the Code, as defined by sections 3750, subdivision (g), 3752, and California Code of Regulations, title 16, section 1399.370, subdivision (a), in that Respondent has been convicted of a violation of the Respiratory Care Practice Act. The circumstances are as follows: Paragraph 12, above, is incorporated by reference as if fully set forth herein.

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1 **DISCIPLINE CONSIDERATIONS** 2 14. To determine the degree of discipline, if any, to be imposed on 3 Respondent, Complainant alleges that on or about May 29, 2001, in a prior disciplinary action 4 entitled "In the matter of the Accusation Against Richard Anthony Sprague, R.C.P.," Case No. 5 R-1504, Respondent's license was revoked, revocation stayed, and he was placed on probation for five years with terms and conditions as a result of his September 9, 1998 conviction of 6 7 driving under the influence of alcohol, refusing a chemical test, and resisting an officer. 8 **PRAYER** 9 WHEREFORE, Complainant requests that a hearing be held on the matters herein 10 alleged, and that following the hearing, the Board issue a decision: 11 1. Revoking or suspending Respiratory Care Practitioner License Number 19625, issued to Richard Anthony Sprague, R.C.P. 12 2. 13 Ordering Richard Anthony Sprague, R.C.P. to pay the Board the costs of 14 the investigation and enforcement of this case, and if placed on probation, the costs of probation 15 monitoring; 3. 16 Taking such other and further action as deemed necessary and proper. 17 18 19 DATED: April 9, 2008 20 21 Original signed by Liane Zimmerman for: 22 STEPHANIE NUNEZ **Executive Officer** 23 Respiratory Care Board of California State of California 24 Complainant 25 SD2008800533 26 sprague r acc.wpd 27

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